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In re Application of :
DENG :
Application No.: 10/510,617 :
PCT No.: PCT/CN2002/000246 : DECISION ON PETITION
Int. Filing Date: 09 April 2002 :
Priority Date: 09 April 2002 :
Attorney Docket No.: 53624/DBP/C306 :
For: A PHARMACEUTICAL COMPOSITION FOR :
TREATING RHEUMATISM AND THE :
PREPARATION THEREOF :

This is a decision on applicant's "Petition Under 37 CFR 1.182 And/Or 1.183 to File a Substitute Translation of The PCT Specification filed on 03 August 2009 in the United States Patent and Trademark Office (USPTO). Applicant has provided payment of \$130.00 towards the petition fee of \$400.00. As authorized, the remaining \$270.00 will be charged to deposit account 03-1728.

BACKGROUND

On 09 April 2002, applicant filed international application PCT/CN2002/000246. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 23 October 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 09 October 2004.

On 07 October 2004, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application; a preliminary amendment and an Information Disclosure Statement.

On 10 March 2005, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide a signed oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was afforded two months to file a proper response.

On 25 April 2005, applicant responded with a signed declaration of the inventor.

On 24 May 2005, applicant was mailed a "Notice of Acceptance" (Form

PCT/DO/EO/903).

On 03 August 2009, applicant filed the present petition under 37 CFR 1.182 and/or 37 CFR 1.183 to have the concurrently filed substitute specification entered.

DISCUSSION

Applicant is petitioning the Office of PCT Legal Administration under 37 CFR 1.182 and/or 1.183 to "enter a substitute, English translation of the PCT specification" in the present national stage application.

The requirement for an English translation of a PCT application filed in a foreign language is set for in 35 U.S.C. 371(c):

(c) The applicant shall file in the Patent and Trademark Office -

...
(2) a copy of the international application, unless not required under subsection (a) of this section or already communicated by the International Bureau, and a translation into the English language of the international application, if it was filed in another language;

Petitioner does not contend that the originally filed translation of the international application is inaccurate or otherwise fails to comply with the requirement of §371(c)(2). To the contrary, Petitioner states that applicant "previously complied with the statutes and regulations pertaining to the entry into the national stage, including submission of a certified English translation of the Chinese language PCT application." Because the requirement for a translation is statutory, the Office does not have authority to waive this requirement or accept anything less than an accurate translation as satisfying §371(c)(2). With regard to the newly submitted "substitute" translation, it is noted that it has not been certified as an accurate translation; rather it has been certified as an English translation that "conforms essentially to the original Chinese language" (emphasis added). Accordingly, the substitute "translation" will not be accepted in lieu of the originally furnished translation based on the present record.

As Petitioner has not identified any requirement of a regulation to be waived, the petition under 37 CFR 1.183 is DISMISSED.

Further, because the regulations (37 CFR 1.125) currently provide for the submission of a substitute specification, the petition under 37 CFR 1.182 is DISMISSED. Applicant is reminded that the provisions of 37 CFR 1.125 permit the submission of a substitute specification to correct a specification provided in faulty English. See MPEP 608.01(q). To the extent that Petitioner disagrees with an Examiner's refusal to enter the substitute specification because of "new matter," the petition procedure under MPEP 1002.02(c) is available.

CONCLUSION

For the reasons stated above applicant's petition is **DISMISSED**.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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